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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DONALD SHERMAN,

Plaintiff,

v.

HAROLD WICKHAM, in his personal capacity; KIM THOMAS, in his personal capacity; WILLIAM GITTERE, in his personal capacity and in his official capacity as Deputy Director of Operations of the Nevada Department of Corrections; BRIAN WILLIAMS, in his official capacity as Deputy Director of Programs of the Nevada Department of Corrections; WILLIAM REUBART, in his personal capacity and in his official capacity as Warden of Ely State Prison; DAVID DRUMMOND, in his official capacity as Associate Warden of Ely State Prison; and TASHEENA COOKE, in her official capacity as Associate Warden of Ely State Prison,

Defendants.

Case No. 3:21-cv-00168-ART-CSD

**JOINT STIPULATION TO
CONTINUE STAY OF SCHEDULING
ORDER AND DISCOVERY PLAN**

(Third Request)

Hon. Anne R. Traum
Hon. Craig S. Denney

STIPULATION TO CONTINUE STAY OF
SCHEDULING ORDER AND DISCOVERY
PLAN

3:21-CV-00168-ART-CSD

1 **JOINT STIPULATION TO CONTINUE STAY OF CASE MANAGEMENT SCHEDULE**

2 Pursuant to LR IA 6-1 and LR 26-3, counsel for Plaintiff Donald Sherman and counsel
 3 for Defendants Harold Wickham, Kim Thomas, William Gittere, Brian Williams, William
 4 Reubart, David Drummond, and Tasheena Cooke respectfully submit this joint stipulation to
 5 continue the stay of the current case management deadlines stated in the Court's December 2,
 6 2022 Order granting the Parties' Joint Motion to Extend Discovery and Scheduling Deadlines,
 7 *see* Dkt. No. 78 (the "Order"), pending the parties' negotiations relating to the specifics of
 8 Plaintiff's access to the sweat lodge in compliance with the Court's March 29, 2023 Order
 9 Overruling Defendants' Objections to Magistrate Judge Denney's Report and Recommendation,
 10 *see* Dkt. No. 80, and in order to permit the parties to explore a global settlement relating to
 11 Plaintiff's claims, *see* Dkt. No. 95.

12 This is the third stipulation to stay the current scheduling Order. The Court previously
 13 stayed and extended case management dates on two prior occasions pursuant to the parties'
 14 stipulation. *See* Dkt. Nos. 70, 71, 94, 95.

15 The parties request to continue the stay of the case management schedule to allow them
 16 to focus on ongoing negotiations relating to Plaintiff's preliminary injunctive relief in accordance
 17 with the Court's May 29, 2023 order, and to continue mediation efforts to explore a global
 18 settlement of Plaintiff's claims.

19 Plaintiff filed a First Amended Complaint on July 18, 2022, adding five new
 20 defendants—Gittere, Williams, Reubart, Drummond, and Cooke—in addition to Defendants
 21 Wickham and Thomas, who Plaintiff named in the original Complaint. *See* Dkt. No. 57. The
 22 newly added Defendants returned waivers of service of the summons on September 23, 2022,
 23 and filed an answer to the First Amended Complaint on October 18, 2022. *See* Dkt. Nos. 65–69,
 24 72. Additionally, Sherman filed a Renewed Motion for Preliminary Injunction on June 2, 2022.
 25 *See* Dkt. No. 47 (the "Motion"). On August 3, 2022, Judge Denney issued a Report and
 26 Recommendation Granting in Part Plaintiff's Motion. *See* Dkt. No. 62. Defendants thereafter
 27 filed objections to Judge Denney's Report and Recommendation. *See* Dkt. No. 63. On March
 28

1 29, 2023, Judge Traum issued an Order Overruling Defendants' Objections to Magistrate Judge
 2 Denney's Report and Recommendation. *See* Dkt. No. 80. In that order, the Court directed the
 3 parties to "meet and confer regarding the specifics of Sherman's access to the sweat lodge." *See*
 4 *id.* at 17. The parties have since engaged in negotiations relating to the scope of Plaintiff's
 5 preliminary injunctive relief and sweat lodge access. *See, e.g.,* Dkt. Nos. 81, 87, 90, 92, 96, 99.
 6 On March 28, 2023, Defendants filed a Notice of Appeal of the Court's March 29, 2023 order.
 7 *See* Dkt. No. 84. Following the filing of Defendants' notice of appeal, the Ninth Circuit ordered
 8 the parties to participate in a mediation conference with the Circuit Mediator and thereafter
 9 stayed the briefing schedule by ninety days. *See Sherman v. Wickham, et al.*, Ninth Circuit Case
 10 No. 23-15665, Dkt. Nos. 5, 9, 11. The Parties have since participated in five mediation
 11 conferences. *See id.*, Dkt. Nos. 9, 12-13, 15, 17. The Circuit Mediator has scheduled a further
 12 mediation conference for October 11, 2023. *See id.*, Dkt. No. 19. In light of the parties' ongoing
 13 settlement negotiations, the Ninth Circuit recently stayed the appellate briefing schedule for an
 14 additional 90 days. *See id.*, Dkt. No. 18. In the interest of conserving the Court's and the
 15 parties' resources, and in order to permit the parties to continue ongoing negotiations pursuant to
 16 the Court's March 29, 2023 order and mediation discussions with the Circuit Mediator, counsel
 17 for the parties jointly request to continue the stay of the current case management dates granted
 18 by the Court on June 27, 2023. *See* Dkt. No. 95.

19 Counsel for the parties have met and conferred regarding this Stipulation and proposed
 20 stay, and no party objects to the requested stay. This Stipulation is being made in good faith and
 21 not for the purpose of delay.

22 DISCOVERY COMPLETED TO DATE

23 Plaintiff and Defendants have exchanged their mandatory initial disclosures. Prior to the
 24 filing of the First Amended Complaint, Plaintiff propounded written discovery on Defendant
 25 Harold Wickham, and Defendant Wickham timely responded to such written discovery requests.
 26 On April 4, 2023, Plaintiff propounded requests for production and interrogatories on Defendants
 27
 28

1 Wickham, Cooke, Drummond, Gittere, Reubart, Thomas, and Williams. As of the date of this
 2 filing, Defendants have not yet responded to those written discovery requests.

3 DISCOVERY YET TO BE COMPLETED

4 Plaintiff is awaiting Defendants' responses to the April 4, 2023 requests for production
 5 and interrogatories. After receiving Defendants' responses, Plaintiff intends to propound
 6 additional written discovery. After written discovery has been propounded and responded to,
 7 Plaintiff intends to notice depositions consistent with the Federal Rules of Civil Procedure and
 8 the Local Rules. Similarly, Defendants intend to serve written discovery and notice a deposition
 9 of the Plaintiff according to applicable rules. The parties will meet and confer regarding expert
 10 discovery and will submit an appropriate stipulation, consistent with the Local Rules, for the
 11 Court's consideration if expert discovery is anticipated.

12 REASONS FOR REQUESTED CONTINUANCE OF STAY

13 The parties request to continue the stay of the current case management deadlines so that
 14 they can continue their ongoing negotiations regarding the specifics of Plaintiff's sweat-lodge
 15 access pursuant to the Court's March 29, 2023 order. Additionally, a continuance of the stay of
 16 the case management deadlines would allow the parties to continue ongoing mediation efforts
 17 with the Circuit Mediator, including exploring a potential global settlement of Plaintiff's claims.

18 PROPOSED TIMELINE

19 Through this Stipulation, the parties hereby respectfully request that the Court enter an
 20 order continuing the stay of the currently imposed case management deadlines set in the Order.
 21 The parties further stipulate that, no later than ninety days from September 25, 2023, they will
 22 submit a joint notice, further stipulation, or proposed order relating to the case management
 23 schedule for the Court's review and approval.

24 Therefore, **IT IS HEREBY STIPULATED AND AGREED** between the parties,
 25 through their counsel, and subject to the Court's approval, that the Court's Order is stayed until
 26 this Court enters a new scheduling order.

1 Respectfully submitted,

2 Dated: September 25, 2023

O'MELVENY & MYERS LLP

3 By: /s/ Meaghan VerGow
4 Meaghan VerGow

5 *Attorneys for Plaintiff Donald Sherman*

6 Dated: September 25, 2023

7 LAW OFFICES OF KRISTINA
WILDEVELD & ASSOCIATES

8 By: /s/ Lisa A. Rasmussen
9 Lisa A. Rasmussen

10 *Attorney for Plaintiff Donald Sherman*

11 Dated: September 25, 2023

12 OFFICE OF THE NEVADA ATTORNEY
GENERAL

13 By: /s/ Chris W. Davis
Chris W. Davis

14 *Attorney for Defendants Harold Wickham et al.*

15 **IT IS SO ORDERED.**

16 Dated this 26th day of September, 2023.

17 

18 Honorable Craig S. Denney
19 United States Magistrate Judge